

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CAZE D. THOMAS,

Plaintiff,

-against-

DOJA CAT; SZA; RCA; KEMOSABE
RECORDS,

Defendants.

24-CV-2856 (LTS)

ORDER OF DISMISSAL

LAURA TAYLOR SWAIN, Chief United States District Judge:

Plaintiff brings this action *pro se*. He alleges that Doja Cat’s song, “Kiss me more,” includes sounds that are similar to sounds in his song, “Love me more.” By order dated April 25, 2024, the Court granted Plaintiff’s request to proceed *in forma pauperis*, that is, without prepayment of fees. For the reasons set forth below, the Court dismisses the complaint, with 30 days’ leave to replead.

STANDARD OF REVIEW

The Court must dismiss an *in forma pauperis* complaint, or any portion of the complaint, that is frivolous or malicious, fails to state a claim on which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C.

§ 1915(e)(2)(B); *see Livingston v. Adirondack Beverage Co.*, 141 F.3d 434, 437 (2d Cir. 1998).

The Court must also dismiss a complaint when the Court lacks subject matter jurisdiction of the claims raised. *See Fed. R. Civ. P. 12(h)(3)*.

While the law mandates dismissal on any of these grounds, the Court is obliged to construe *pro se* pleadings liberally, *Harris v. Mills*, 572 F.3d 66, 72 (2d Cir. 2009), and interpret them to raise the “strongest [claims] that they suggest,” *Triestman v. Fed. Bureau of Prisons*, 470 F.3d 471, 474 (2d Cir. 2006) (internal quotation marks and citations omitted) (emphasis in

original). But the “special solicitude” in *pro se* cases, *id.* at 475 (citation omitted), has its limits – to state a claim, *pro se* pleadings still must comply with Rule 8 of the Federal Rules of Civil Procedure, which requires a complaint to make a short and plain statement showing that the pleader is entitled to relief.

Rule 8 requires a complaint to include enough facts to state a claim for relief “that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A claim is facially plausible if the plaintiff pleads enough factual detail to allow the Court to draw the inference that the defendant is liable for the alleged misconduct. In reviewing the complaint, the Court must accept all well-pleaded factual allegations as true. *Ashcroft v. Iqbal*, 556 U.S. 662, 678-79 (2009). But it does not have to accept as true “[t]hreadbare recitals of the elements of a cause of action,” which are essentially just legal conclusions. *Twombly*, 550 U.S. at 555. After separating legal conclusions from well-pleaded factual allegations, the Court must determine whether those facts make it plausible – not merely possible – that the pleader is entitled to relief. *Id.*

BACKGROUND

The following allegations are drawn from Plaintiff’s complaint. In 2020, Plaintiff created a song titled, “Love me more,” using an app that makes voice memos. Plaintiff labeled his song with emojis of astronauts falling from the sky because astronauts are “a theme of [his] branding.” (ECF 1 at 5.) Plaintiff made a “screen recording” of his song playing on the app and then posted the screen recording to “Twitter.” (*Id.*) Later, Plaintiff posted the recording on YouTube.

On an unspecified date, Plaintiff heard a song called, “Kiss me more,” by Doja Cat. Part of Plaintiff’s song was recorded on the subway, and the video of Doja Cat’s song “contain[s] sounds substantially similar to th[ose] on [Plaintiff’s] song.” (*Id.*) Moreover, Doja Cat uses an astronaut in her video, as did Plaintiff. Plaintiff contacted Doja Cat and “she claim[ed] she had

asked her staff who “Kiss me more” sounds like, and they decided to go with Olivia Newton John’s song.” (*Id.* at 6.)

Plaintiff seeks damages and to “remove [his] intellectual property from all contracts unauthorized” (*Id.*) He invokes, as the basis for his claims, “Infringement” “All Intellectual property rights,” “Branding dilution/Business Interferes,” “Trade dress and trademark violations.” (*Id.* at 2.)¹

DISCUSSION

A. Copyright Infringement

Plaintiff alleges Defendants have engaged in “infringement,” which the Court construes as a claim a copyright infringement under the federal Copyright Act, 17 U.S.C. § 501. To state a claim for copyright infringement, a plaintiff must allege facts suggesting the “(1) ownership of a valid copyright, and (2) copying of constituent elements of the work that are original.” *Feist Publ’ns, Inc. v. Rural Telephone Serv. Co.*, 499 U.S. 340, 361 (1991); *see also Matthew Bender & Co. v. W. Pub. Co.*, 158 F.3d 674, 679 (2d Cir. 1998).

Registration with the United States Copyright Office is not required for a work to obtain copyright protection. *See* 17 U.S.C. § 408(a) (“[R]egistration is not a condition of copyright protection.”). Nevertheless, registration of a copyright with the United States Copyright Office is a precondition for bringing an infringement action in federal court. Section 411(a) of the Copyright Act provides that “no action for infringement of the copyright in any United States work shall be instituted until registration of the copyright claim has been made in accordance

¹ Plaintiff has brought numerous suits in this court, many of which involve allegations of copyright infringement. *See, e.g., Thomas v. Universal Music Group*, No. 24-CV-2222 (VSB) (S.D.N.Y.); *Thomas v. Universal Music Group*, No. 23-CV-10013 (VSB) (S.D.N.Y.); *Thomas v. Twitter Corporate Office*, No. 22-CV-5341 (KPF) (S.D.N.Y. Dec. 6, 2023).

with this title.” 17 U.S.C. § 411(a); *see also Reed Elsevier, Inc. v. Muchnick*, 559 U.S. 154, 158 (2010) (holding that copyright registration is a condition that a plaintiff “must satisfy before filing an infringement claim and invoking the [Copyright] Act’s remedial provisions”); *Newton v. Penguin/Berkley Publ’g USA*, No. 13-CV-1283, 2014 WL 61232, at *4 (S.D.N.Y. Jan. 6, 2014) (“The Supreme Court has held that this provision imposes a ‘precondition’ to filing a claim for copyright infringement.”).

Plaintiff does not allege that he registered his original work, “Love me more,” with the U.S. Copyright Office. *See Home & Nature, Inc. v. Sherman Specialty Co., Inc.*, 322 F. Supp. 2d 260, 266 (E.D.N.Y. 2004) (noting that alleging copyright registration is pleading requirement). Because registration of a copyright is a precondition to suit, and Plaintiff does not allege that he has a registered copyright for the work at issue, Plaintiff’s copyright infringement claim is dismissed without prejudice.²

B. Trademark Infringement

Plaintiff references trademark infringement, and he therefore appears to assert a claim under the Federal Trademark Act of 1946, 15 U.S.C. §1051, *et seq.*, which is also known as the Lanham Act. To state a claim of trademark infringement under the Lanham Act, “a plaintiff ‘must allege sufficient facts to establish: (1) that the plaintiff’s mark is entitled to protection, and (2) that the defendant’s use of [the] mark is likely to cause consumers confusion as to the origin or sponsorship of [its] goods [or services].” *Adidas Am., Inc. v. Thom Brown Inc.*, 599 F.Supp.3d 151, 158 (S.D.N.Y. 2022) (citation omitted, second alteration in original). “A certificate of

² Although the Court need not reach the issue, the Court also notes that insofar as Plaintiff is alleging only that both his song and Doja Cat’s song have similar background noise from having been recorded on the subway, such allegations are insufficient to show copying of the original elements of a work.

registration with the [United States Patent and Trademark Office] is *prima facie* evidence that the mark is registered and valid (*i.e.*, protectible), that the registrant owns the mark, and that the registrant has the exclusive right to use the mark in commerce.” *Lane Capital Mgmt. Inc. v. Lane Capital Mgmt., Inc.*, 192 F.3d 337, 345 (2d Cir. 1999) (citing 15 U.S.C. § 1115(a)).

It is unclear what mark Plaintiff has registered and seeks to protect. Plaintiff’s allegations that his “brand” has a “theme” of astronauts are insufficient to allege that he has a registered mark entitled to protection. The Court therefore dismisses Plaintiff’s trademark infringement claim for failure to state a claim on which relief can be granted.

C. Leave to Replead

Plaintiff proceeds in this matter without the benefit of an attorney. District courts generally should grant a self-represented plaintiff an opportunity to amend a complaint to cure its defects, unless amendment would be futile. *See Hill v. Curcione*, 657 F.3d 116, 123-24 (2d Cir. 2011); *Salahuddin v. Cuomo*, 861 F.2d 40, 42 (2d Cir. 1988). Because it is not clear that granting leave to amend would be futile, the Court grants Plaintiff 30 days’ leave to amend his complaint to detail his claims. If Plaintiff repleads his copyright infringement claim, he must plead facts showing that he has a registered copyright.

CONCLUSION

Plaintiff’s claims under the Copyright Act and Lanham Act are dismissed for failure to state a claim on which relief can be granted, and the Court declines under 28 U.S.C. § 1367(c)(3) to exercise supplemental jurisdiction of any state law claims. Plaintiff may submit an amended complaint within 30 days. An amended complaint form is attached to this order. The amended complaint must be labeled with the docket number 24-CV-2856 (LTS).

If Plaintiff fails to file an amended complaint within 30 days, the Court will direct the Clerk of Court to enter judgment.

The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith, and therefore *in forma pauperis* status is denied for the purpose of an appeal. *See Coppedge v. United States*, 369 U.S. 438, 444-45 (1962).

SO ORDERED.

Dated: May 28, 2024
New York, New York

/s/ Laura Taylor Swain

LAURA TAYLOR SWAIN
Chief United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Write the full name of each plaintiff.

____ CV ____
(Include case number if one has been assigned)

-against-

AMENDED

COMPLAINT

Do you want a jury trial?

☐ Yes ☐ No

Write the full name of each defendant. If you need more space, please write "see attached" in the space above and attach an additional sheet of paper with the full list of names. The names listed above must be identical to those contained in Section II.

NOTICE

The public can access electronic court files. For privacy and security reasons, papers filed with the court should therefore *not* contain: an individual's full social security number or full birth date; the full name of a person known to be a minor; or a complete financial account number. A filing may include *only*: the last four digits of a social security number; the year of an individual's birth; a minor's initials; and the last four digits of a financial account number. See Federal Rule of Civil Procedure 5.2.

I. BASIS FOR JURISDICTION

Federal courts are courts of limited jurisdiction (limited power). Generally, only two types of cases can be heard in federal court: cases involving a federal question and cases involving diversity of citizenship of the parties. Under 28 U.S.C. § 1331, a case arising under the United States Constitution or federal laws or treaties is a federal question case. Under 28 U.S.C. § 1332, a case in which a citizen of one State sues a citizen of another State or nation, and the amount in controversy is more than \$75,000, is a diversity case. In a diversity case, no defendant may be a citizen of the same State as any plaintiff.

What is the basis for federal-court jurisdiction in your case?

- ☐ **Federal Question**
- ☐ **Diversity of Citizenship**

A. If you checked Federal Question

Which of your federal constitutional or federal statutory rights have been violated?

B. If you checked Diversity of Citizenship

1. Citizenship of the parties

Of what State is each party a citizen?

The plaintiff, _____, is a citizen of the State of
(Plaintiff's name)

(State in which the person resides and intends to remain.)

or, if not lawfully admitted for permanent residence in the United States, a citizen or subject of the foreign state of

_____.

If more than one plaintiff is named in the complaint, attach additional pages providing information for each additional plaintiff.

If the defendant is an individual:

The defendant, _____, is a citizen of the State of
(Defendant's name)

or, if not lawfully admitted for permanent residence in the United States, a citizen or
subject of the foreign state of

If the defendant is a corporation:

The defendant, _____, is incorporated under the laws of
the State of _____

and has its principal place of business in the State of _____

or is incorporated under the laws of (foreign state) _____

and has its principal place of business in _____.

If more than one defendant is named in the complaint, attach additional pages providing
information for each additional defendant.

II. PARTIES

A. Plaintiff Information

Provide the following information for each plaintiff named in the complaint. Attach additional
pages if needed.

First Name	Middle Initial	Last Name
Street Address		
County, City	State	Zip Code
Telephone Number	Email Address (if available)	

B. Defendant Information

To the best of your ability, provide addresses where each defendant may be served. If the correct information is not provided, it could delay or prevent service of the complaint on the defendant. Make sure that the defendants listed below are the same as those listed in the caption. Attach additional pages if needed.

Defendant 1:

First Name	Last Name	
Current Job Title (or other identifying information)		
Current Work Address (or other address where defendant may be served)		
County, City	State	Zip Code

Defendant 2:

First Name	Last Name	
Current Job Title (or other identifying information)		
Current Work Address (or other address where defendant may be served)		
County, City	State	Zip Code

Defendant 3:

First Name	Last Name	
Current Job Title (or other identifying information)		
Current Work Address (or other address where defendant may be served)		
County, City	State	Zip Code

INJURIES:

If you were injured as a result of these actions, describe your injuries and what medical treatment, if any, you required and received.

IV. RELIEF

State briefly what money damages or other relief you want the court to order.

V. PLAINTIFF'S CERTIFICATION AND WARNINGS

By signing below, I certify to the best of my knowledge, information, and belief that: (1) the complaint is not being presented for an improper purpose (such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation); (2) the claims are supported by existing law or by a nonfrivolous argument to change existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Federal Rule of Civil Procedure 11.

I agree to notify the Clerk's Office in writing of any changes to my mailing address. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Each Plaintiff must sign and date the complaint. Attach additional pages if necessary. If seeking to proceed without prepayment of fees, each plaintiff must also submit an IFP application.

Dated	Plaintiff's Signature
First Name	Middle Initial
	Last Name
Street Address	
County, City	State
	Zip Code
Telephone Number	Email Address (if available)

I have read the Pro Se (Nonprisoner) Consent to Receive Documents Electronically:

☐ Yes ☐ No

If you do consent to receive documents electronically, submit the completed form with your complaint. If you do not consent, please do not attach the form.